

Union Calendar No. 492

106TH CONGRESS
2D SESSION

H. R. 1161

[Report No. 106–834, Part I]

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1999

Mr. LEACH (for himself, Mr. LAFALCE, and Mrs. ROUKEMA) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on the Judiciary, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 7, 2000

Reported from the Committee on Banking and Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

SEPTEMBER 7, 2000

Referral to the Committees on the Judiciary and Commerce extended for a period ending not later than September 7, 2000.

SEPTEMBER 7, 2000

The Committees on the Judiciary and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Financial Contract Net-*
 5 *ting Improvement Act of 2000”.*

6 **SEC. 2. TREATMENT OF CERTAIN AGREEMENTS BY CON-**
 7 **SERVATORS OR RECEIVERS OF INSURED DE-**
 8 **POSITORY INSTITUTIONS.**

9 *(a) DEFINITION OF QUALIFIED FINANCIAL CON-*
 10 *TRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit In-*
 11 *surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by in-*
 12 *serting “, resolution or order” after “any similar agreement*
 13 *that the Corporation determines by regulation”.*

14 *(b) DEFINITION OF SECURITIES CONTRACT.—Section*
 15 *11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12*
 16 *U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:*

17 *“(ii) SECURITIES CONTRACT.—The*
 18 *term ‘securities contract’—*

1 “(I) means a contract for the pur-
2 chase, sale, or loan of a security, a cer-
3 tificate of deposit, a mortgage loan, or
4 any interest in a mortgage loan, a
5 group or index of securities, certificates
6 of deposit, or mortgage loans or inter-
7 ests therein (including any interest
8 therein or based on the value thereof)
9 or any option on any of the foregoing,
10 including any option to purchase or
11 sell any such security, certificate of de-
12 posit, loan, interest, group or index, or
13 option;

14 “(II) does not include any pur-
15 chase, sale, or repurchase obligation
16 under a participation in a commercial
17 mortgage loan unless the Corporation
18 determines by regulation, resolution, or
19 order to include any such agreement
20 within the meaning of such term;

21 “(III) means any option entered
22 into on a national securities exchange
23 relating to foreign currencies;

24 “(IV) means the guarantee by or
25 to any securities clearing agency of

1 *any settlement of cash, securities, cer-*
2 *tificates of deposit, mortgage loans or*
3 *interests therein, group or index of se-*
4 *curities, certificates of deposit, or mort-*
5 *gage loans or interests therein (includ-*
6 *ing any interest therein or based on*
7 *the value thereof) or option on any of*
8 *the foregoing, including any option to*
9 *purchase or sell any such security, cer-*
10 *tificate of deposit, loan, interest, group*
11 *or index, or option;*

12 *“(V) means any margin loan;*

13 *“(VI) means any other agreement*
14 *or transaction that is similar to any*
15 *agreement or transaction referred to in*
16 *this clause;*

17 *“(VII) means any combination of*
18 *the agreements or transactions referred*
19 *to in this clause;*

20 *“(VIII) means any option to enter*
21 *into any agreement or transaction re-*
22 *ferred to in this clause;*

23 *“(IX) means a master agreement*
24 *that provides for an agreement or*
25 *transaction referred to in subclause (I),*

1 (III), (IV), (V), (VI), (VII), or (VIII),
 2 together with all supplements to any
 3 such master agreement, without regard
 4 to whether the master agreement pro-
 5 vides for an agreement or transaction
 6 that is not a securities contract under
 7 this clause, except that the master
 8 agreement shall be considered to be a
 9 securities contract under this clause
 10 only with respect to each agreement or
 11 transaction under the master agree-
 12 ment that is referred to in subclause
 13 (I), (III), (IV), (V), (VI), (VII), or
 14 (VIII); and

15 “(X) means any security agree-
 16 ment or arrangement or other credit
 17 enhancement related to any agreement
 18 or transaction referred to in this
 19 clause.”.

20 (c) *DEFINITION OF COMMODITY CONTRACT.*—Section
 21 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12
 22 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

23 “(iii) *COMMODITY CONTRACT.*—The
 24 term ‘commodity contract’ means—

1 “(I) with respect to a futures com-
2 mission merchant, a contract for the
3 purchase or sale of a commodity for fu-
4 ture delivery on, or subject to the rules
5 of, a contract market or board of trade;

6 “(II) with respect to a foreign fu-
7 tures commission merchant, a foreign
8 future;

9 “(III) with respect to a leverage
10 transaction merchant, a leverage trans-
11 action;

12 “(IV) with respect to a clearing
13 organization, a contract for the pur-
14 chase or sale of a commodity for future
15 delivery on, or subject to the rules of,
16 a contract market or board of trade
17 that is cleared by such clearing organi-
18 zation, or commodity option traded on,
19 or subject to the rules of, a contract
20 market or board of trade that is
21 cleared by such clearing organization;

22 “(V) with respect to a commodity
23 options dealer, a commodity option;

24 “(VI) any other agreement or
25 transaction that is similar to any

1 *agreement or transaction referred to in*
2 *this clause;*

3 “(VII) *any combination of the*
4 *agreements or transactions referred to*
5 *in this clause;*

6 “(VIII) *any option to enter into*
7 *any agreement or transaction referred*
8 *to in this clause;*

9 “(IX) *a master agreement that*
10 *provides for an agreement or trans-*
11 *action referred to in subclause (I), (II),*
12 *(III), (IV), (V), (VI), (VII), or (VIII),*
13 *together with all supplements to any*
14 *such master agreement, without regard*
15 *to whether the master agreement pro-*
16 *vides for an agreement or transaction*
17 *that is not a commodity contract*
18 *under this clause, except that the mas-*
19 *ter agreement shall be considered to be*
20 *a commodity contract under this clause*
21 *only with respect to each agreement or*
22 *transaction under the master agree-*
23 *ment that is referred to in subclause*
24 *(I), (II), (III), (IV), (V), (VI), (VII), or*
25 *(VIII); or*

1 “(X) *any security agreement or*
 2 *arrangement or other credit enhance-*
 3 *ment related to any agreement or*
 4 *transaction referred to in this clause.”.*

5 (d) *DEFINITION OF FORWARD CONTRACT.*—Section
 6 *11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12*
 7 *U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:*

8 “(iv) *FORWARD CONTRACT.*—The term
 9 ‘forward contract’ means—

10 “(I) *a contract (other than a com-*
 11 *modity contract) for the purchase, sale,*
 12 *or transfer of a commodity or any*
 13 *similar good, article, service, right, or*
 14 *interest which is presently or in the fu-*
 15 *ture becomes the subject of dealing in*
 16 *the forward contract trade, or product*
 17 *or byproduct thereof, with a maturity*
 18 *date more than 2 days after the date*
 19 *the contract is entered into, including*
 20 *a repurchase transaction, reverse re-*
 21 *purchase transaction, consignment,*
 22 *lease, swap, hedge transaction, deposit,*
 23 *loan, option, allocated transaction,*
 24 *unallocated transaction, or any other*
 25 *similar agreement;*

1 “(II) any combination of agree-
2 ments or transactions referred to in
3 subclauses (I) and (III);

4 “(III) any option to enter into
5 any agreement or transaction referred
6 to in subclause (I) or (II);

7 “(IV) a master agreement that
8 provides for an agreement or trans-
9 action referred to in subclause (I), (II),
10 or (III), together with all supplements
11 to any such master agreement, without
12 regard to whether the master agreement
13 provides for an agreement or trans-
14 action that is not a forward contract
15 under this clause, except that the mas-
16 ter agreement shall be considered to be
17 a forward contract under this clause
18 only with respect to each agreement or
19 transaction under the master agree-
20 ment that is referred to in subclause
21 (I), (II), or (III); or

22 “(V) any security agreement or
23 arrangement or other credit enhance-
24 ment related to any agreement or

1 *transaction referred to in subclause (I),*
2 *(II), (III), or (IV).”.*

3 *(e) DEFINITION OF REPURCHASE AGREEMENT.—Sec-*
4 *tion 11(e)(8)(D)(v) of the Federal Deposit Insurance Act*
5 *(12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:*

6 *“(v) REPURCHASE AGREEMENT.—The*
7 *term ‘repurchase agreement’ (which defini-*
8 *tion also applies to the term ‘reverse repur-*
9 *chase agreement’)—*

10 *“(I) means an agreement, includ-*
11 *ing related terms, which provides for*
12 *the transfer of 1 or more certificates of*
13 *deposit, mortgage-related securities (as*
14 *such term is defined in the Securities*
15 *Exchange Act of 1934), mortgage loans,*
16 *interests in mortgage-related securities*
17 *or mortgage loans, eligible bankers’ ac-*
18 *ceptances, qualified foreign government*
19 *securities or securities that are direct*
20 *obligations of, or that are fully guaran-*
21 *teed by, the United States or any agen-*
22 *cy of the United States against the*
23 *transfer of funds by the transferee of*
24 *such certificates of deposit, eligible*
25 *bankers’ acceptances, securities, loans,*

1 *or interests with a simultaneous agree-*
2 *ment by such transferee to transfer to*
3 *the transferor thereof certificates of de-*
4 *posit, eligible bankers' acceptances, se-*
5 *curities, loans, or interests as described*
6 *above, at a date certain not later than*
7 *1 year after such transfers or on de-*
8 *mand, against the transfer of funds, or*
9 *any other similar agreement;*

10 *“(II) does not include any repur-*
11 *chase obligation under a participation*
12 *in a commercial mortgage loan unless*
13 *the Corporation determines by regula-*
14 *tion, resolution, or order to include*
15 *any such participation within the*
16 *meaning of such term;*

17 *“(III) means any combination of*
18 *agreements or transactions referred to*
19 *in subclauses (I) and (IV);*

20 *“(IV) means any option to enter*
21 *into any agreement or transaction re-*
22 *ferred to in subclause (I) or (III);*

23 *“(V) means a master agreement*
24 *that provides for an agreement or*
25 *transaction referred to in subclause (I),*

1 *(III), or (IV), together with all supple-*
2 *ments to any such master agreement,*
3 *without regard to whether the master*
4 *agreement provides for an agreement*
5 *or transaction that is not a repurchase*
6 *agreement under this clause, except*
7 *that the master agreement shall be con-*
8 *sidered to be a repurchase agreement*
9 *under this subclause only with respect*
10 *to each agreement or transaction under*
11 *the master agreement that is referred to*
12 *in subclause (I), (III), or (IV); and*

13 *“(VI) means any security agree-*
14 *ment or arrangement or other credit*
15 *enhancement related to any agreement*
16 *or transaction referred to in subclause*
17 *(I), (III), (IV), or (V).*

18 *For purposes of this clause, the term ‘quali-*
19 *fied foreign government security’ means a*
20 *security that is a direct obligation of, or*
21 *that is fully guaranteed by, the central gov-*
22 *ernment of a member of the Organization*
23 *for Economic Cooperation and Development*
24 *(as determined by regulation or order*

1 *adopted by the appropriate Federal banking*
 2 *authority).”.*

3 (f) *DEFINITION OF SWAP AGREEMENT.*—*Section*
 4 *11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12*
 5 *U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:*

6 “(vi) *SWAP AGREEMENT.*—*The term*
 7 *‘swap agreement’ means—*

8 *“(I) any agreement, including the*
 9 *terms and conditions incorporated by*
 10 *reference in any such agreement, which*
 11 *is an interest rate swap, option, future,*
 12 *or forward agreement, including a rate*
 13 *floor, rate cap, rate collar, cross-cur-*
 14 *rency rate swap, and basis swap; a*
 15 *spot, same day-tomorrow, tomorrow-*
 16 *next, forward, or other foreign ex-*
 17 *change or precious metals agreement; a*
 18 *currency swap, option, future, or for-*
 19 *ward agreement; an equity index or eq-*
 20 *uity swap, option, future, or forward*
 21 *agreement; a debt index or debt swap,*
 22 *option, future, or forward agreement; a*
 23 *credit spread or credit swap, option,*
 24 *future, or forward agreement; a com-*
 25 *modity index or commodity swap, op-*

1 *tion, future, or forward agreement; or*
2 *a weather swap, weather derivative, or*
3 *a weather option;*

4 *“(II) any agreement or trans-*
5 *action similar to any other agreement*
6 *or transaction referred to in this clause*
7 *that is presently, or in the future be-*
8 *comes, regularly entered into in the*
9 *swap market (including terms and*
10 *conditions incorporated by reference in*
11 *such agreement) and that is a forward,*
12 *swap, future, or option on 1 or more*
13 *rates, currencies, commodities, equity*
14 *securities or other equity instruments,*
15 *debt securities or other debt instru-*
16 *ments, or economic indices or measures*
17 *of economic risk or value;*

18 *“(III) any combination of agree-*
19 *ments or transactions referred to in*
20 *this clause;*

21 *“(IV) any option to enter into*
22 *any agreement or transaction referred*
23 *to in this clause;*

24 *“(V) a master agreement that pro-*
25 *vides for an agreement or transaction*

1 referred to in subclause (I), (II), (III),
2 or (IV), together with all supplements
3 to any such master agreement, without
4 regard to whether the master agreement
5 contains an agreement or transaction
6 that is not a swap agreement under
7 this clause, except that the master
8 agreement shall be considered to be a
9 swap agreement under this clause only
10 with respect to each agreement or
11 transaction under the master agree-
12 ment that is referred to in subclause
13 (I), (II), (III), or (IV); and

14 “(VI) any security agreement or
15 arrangement or other credit enhance-
16 ment related to any agreements or
17 transactions referred to in subpara-
18 graph (I), (II), (III), (IV), or (V).

19 Such term is applicable for purposes of this
20 title only and shall not be construed or ap-
21 plied so as to challenge or affect the charac-
22 terization, definition, or treatment of any
23 swap agreement under any other statute,
24 regulation, or rule, including the Securities
25 Act of 1933, the Securities Exchange Act of

1 1934, the Public Utility Holding Company
 2 Act of 1935, the Trust Indenture Act of
 3 1939, the Investment Company Act of 1940,
 4 the Investment Advisers Act of 1940, the Se-
 5 curities Investor Protection Act of 1970, the
 6 Commodity Exchange Act, and the regula-
 7 tions promulgated by the Securities and Ex-
 8 change Commission or the Commodity Fu-
 9 tures Trading Commission.”.

10 (g) DEFINITION OF TRANSFER.—Section
 11 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12
 12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

13 “(viii) TRANSFER.—The term ‘trans-
 14 fer’ means every mode, direct or indirect,
 15 absolute or conditional, voluntary or invol-
 16 untary, of disposing of or parting with
 17 property or with an interest in property,
 18 including retention of title as a security in-
 19 terest and foreclosure of the depository
 20 institutions’s equity of redemption.”.

21 (h) TREATMENT OF QUALIFIED FINANCIAL CON-
 22 TRACTS.—Section 11(e)(8) of the Federal Deposit Insurance
 23 Act (12 U.S.C. 1821(e)(8)) is amended—

24 (1) in subparagraph (A), by striking “paragraph
 25 (10)” and inserting “paragraphs (9) and (10)”;

1 (2) in subparagraph (A)(i), by striking “to cause
2 the termination or liquidation” and inserting “such
3 person has to cause the termination, liquidation, or
4 acceleration”;

5 (3) by amending subparagraph (A)(ii) to read as
6 follows:

7 “(ii) any right under any security
8 agreement or arrangement or other credit
9 enhancement related to 1 or more qualified
10 financial contracts described in clause (i);”;
11 and

12 (4) by amending subparagraph (E)(ii) to read
13 as follows:

14 “(ii) any right under any security
15 agreement or arrangement or other credit
16 enhancement related to 1 or more qualified
17 financial contracts described in clause (i);”.

18 (i) AVOIDANCE OF TRANSFERS.—Section
19 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12
20 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section
21 5242 of the Revised Statutes of the United States (12 U.S.C.
22 91) or any other Federal or State law relating to the avoid-
23 ance of preferential or fraudulent transfers,” before “the
24 Corporation”.

1 **SEC. 3. AUTHORITY OF THE CORPORATION WITH RESPECT**
 2 **TO FAILED AND FAILING INSTITUTIONS.**

3 (a) *IN GENERAL.*—Section 11(e)(8) of the Federal De-
 4 posit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

5 (1) in subparagraph (E), by striking “other than
 6 paragraph (12) of this subsection, subsection (d)(9)”
 7 and inserting “other than subsections (d)(9) and
 8 (e)(10)”; and

9 (2) by adding at the end the following new sub-
 10 paragraphs:

11 “(F) *CLARIFICATION.*—No provision of law
 12 shall be construed as limiting the right or power
 13 of the Corporation, or authorizing any court or
 14 agency to limit or delay, in any manner, the
 15 right or power of the Corporation to transfer any
 16 qualified financial contract in accordance with
 17 paragraphs (9) and (10) of this subsection or to
 18 disaffirm or repudiate any such contract in ac-
 19 cordance with paragraph (1).

20 “(G) *WALKAWAY CLAUSES NOT EFFEC-*
 21 *TIVE.*—

22 “(i) *IN GENERAL.*—Notwithstanding
 23 the provisions of subparagraphs (A) and
 24 (E), and sections 403 and 404 of the Fed-
 25 eral Deposit Insurance Corporation Im-
 26 provement Act of 1991, no walkaway clause

1 *shall be enforceable in a qualified financial*
 2 *contract of an insured depository institu-*
 3 *tion in default.*

4 “(ii) *WALKAWAY CLAUSE DEFINED.—*
 5 *For purposes of this subparagraph, the term*
 6 *‘walkaway clause’ means a provision in a*
 7 *qualified financial contract that, after cal-*
 8 *culatation of a value of a party’s position or*
 9 *an amount due to or from 1 of the parties*
 10 *in accordance with its terms upon termi-*
 11 *nation, liquidation, or acceleration of the*
 12 *qualified financial contract, either does not*
 13 *create a payment obligation of a party or*
 14 *extinguishes a payment obligation of a*
 15 *party in whole or in part solely because of*
 16 *such party’s status as a nondefaulting*
 17 *party.”.*

18 (b) *TECHNICAL AND CONFORMING AMENDMENT.—Sec-*
 19 *tion 11(e)(12)(A) of the Federal Deposit Insurance Act (12*
 20 *U.S.C. 1821(e)(12)(A)) is amended by inserting “or the ex-*
 21 *ercise of rights or powers” after “the appointment”.*

22 **SEC. 4. AMENDMENTS RELATING TO TRANSFERS OF QUALI-**
 23 **FIED FINANCIAL CONTRACTS.**

24 (a) *TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS*
 25 *TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Fed-*

1 *eral Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is*
2 *amended to read as follows:*

3 “(9) *TRANSFER OF QUALIFIED FINANCIAL CON-*
4 *TRACTS.—*

5 “(A) *IN GENERAL.—In making any transfer*
6 *of assets or liabilities of a depository institution*
7 *in default which includes any qualified financial*
8 *contract, the conservator or receiver for such de-*
9 *pository institution shall either—*

10 “(i) *transfer to 1 financial institution,*
11 *other than a financial institution for which*
12 *a conservator, receiver, trustee in bank-*
13 *ruptcy, or other legal custodian has been*
14 *appointed or which is otherwise the subject*
15 *of a bankruptcy or insolvency proceeding—*

16 “(I) *all qualified financial con-*
17 *tracts between any person or any affil-*
18 *iate of such person and the depository*
19 *institution in default;*

20 “(II) *all claims of such person or*
21 *any affiliate of such person against*
22 *such depository institution under any*
23 *such contract (other than any claim*
24 *which, under the terms of any such*
25 *contract, is subordinated to the claims*

1 of general unsecured creditors of such
2 institution);

3 “(III) all claims of such deposi-
4 tory institution against such person or
5 any affiliate of such person under any
6 such contract; and

7 “(IV) all property securing or any
8 other credit enhancement for any con-
9 tract described in subclause (I) or any
10 claim described in subclause (II) or
11 (III) under any such contract; or

12 “(ii) transfer none of the qualified fi-
13 nancial contracts, claims, property or other
14 credit enhancement referred to in clause (i)
15 (with respect to such person and any affil-
16 iate of such person).

17 “(B) TRANSFER TO FOREIGN BANK, FOR-
18 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
19 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
20 STITUTION.—In transferring any qualified fi-
21 nancial contracts and related claims and prop-
22 erty pursuant to subparagraph (A)(i), the con-
23 servator or receiver for such depository institu-
24 tion shall not make such transfer to a foreign
25 bank, financial institution organized under the

1 *laws of a foreign country, or a branch or agency*
2 *of a foreign bank or financial institution unless,*
3 *under the law applicable to such bank, financial*
4 *institution, branch or agency, to the qualified fi-*
5 *nancial contracts, and to any netting contract,*
6 *any security agreement or arrangement or other*
7 *credit enhancement related to 1 or more qualified*
8 *financial contracts, the contractual rights of the*
9 *parties to such qualified financial contracts, net-*
10 *ting contracts, security agreements or arrange-*
11 *ments, or other credit enhancements are enforce-*
12 *able substantially to the same extent as per-*
13 *mitted under this section.*

14 *“(C) TRANSFER OF CONTRACTS SUBJECT TO*
15 *THE RULES OF A CLEARING ORGANIZATION.—In*
16 *the event that a conservator or receiver transfers*
17 *any qualified financial contract and related*
18 *claims, property and credit enhancements pursu-*
19 *ant to subparagraph (A)(i) and such contract is*
20 *subject to the rules of a clearing organization,*
21 *the clearing organization shall not be required to*
22 *accept the transferee as a member by virtue of*
23 *the transfer.*

24 *“(D) DEFINITION.—For purposes of this*
25 *section, the term ‘financial institution’ means a*

1 *broker or dealer, a depository institution, a fu-*
 2 *tures commission merchant, or any other institu-*
 3 *tion as determined by the Corporation by regula-*
 4 *tion to be a financial institution.”.*

5 **(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT**
 6 **COUNTERPARTIES.**—*Section 11(e)(10)(A) of the Federal*
 7 *Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is*
 8 *amended by amending the flush material following clause*
 9 *(ii) to read as follows: “the conservator or receiver shall no-*
 10 *tify any person who is a party to any such contract of such*
 11 *transfer by 5:00 p.m. (eastern time) on the business day*
 12 *following the date of the appointment of the receiver, in the*
 13 *case of a receivership, or the business day following such*
 14 *transfer, in the case of a conservatorship.”.*

15 **(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF**
 16 **BRIDGE BANKS.**—*Section 11(e)(10) of the Federal Deposit*
 17 *Insurance Act (12 U.S.C. 1821(e)(10)) is further*
 18 *amended—*

19 *(1) by redesignating subparagraph (B) as sub-*
 20 *paragraph (D); and*

21 *(2) by inserting after subparagraph (A) the fol-*
 22 *lowing new subparagraphs:*

23 **“(B) CERTAIN RIGHTS NOT ENFORCE-**
 24 **ABLE.—**

1 “(i) *RECEIVERSHIP.*—A person who is
2 a party to a qualified financial contract
3 with an insured depository institution may
4 not exercise any right such person has to
5 terminate, liquidate, or net such contract
6 under paragraph (8)(A) or section 403 or
7 404 of the Federal Deposit Insurance Cor-
8 poration Improvement Act of 1991 solely by
9 reason of or incidental to the appointment
10 of a receiver for the depository institution
11 (or the insolvency or financial condition of
12 the depository institution for which the re-
13 ceiver has been appointed)—

14 “(I) until 5:00 p.m. (eastern time)
15 on the business day following the date
16 of the appointment of the receiver; or

17 “(II) after the person has received
18 notice that the contract has been trans-
19 ferred pursuant to paragraph (9)(A).

20 “(ii) *CONSERVATORSHIP.*—A person
21 who is a party to a qualified financial con-
22 tract with an insured depository institution
23 may not exercise any right such person has
24 to terminate, liquidate, or net such contract
25 under paragraph (8)(E) or section 403 or

1 404 of the Federal Deposit Insurance Cor-
 2 poration Improvement Act of 1991, solely
 3 by reason of or incidental to the appoint-
 4 ment of a conservator for the depository in-
 5 stitution (or the insolvency or financial
 6 condition of the depository institution for
 7 which the conservator has been appointed).

8 “(iii) NOTICE.—For purposes of this
 9 subsection, the Corporation as receiver or
 10 conservator of an insured depository insti-
 11 tution shall be deemed to have notified a
 12 person who is a party to a qualified finan-
 13 cial contract with such depository institu-
 14 tion if the Corporation has taken steps rea-
 15 sonably calculated to provide notice to such
 16 person by the time specified in subpara-
 17 graph (A) of this subsection.

18 “(C) TREATMENT OF BRIDGE BANKS.—The
 19 following institutions shall not be considered a
 20 financial institution for which a conservator, re-
 21 ceiver, trustee in bankruptcy, or other legal cus-
 22 todian has been appointed or which is otherwise
 23 the subject of a bankruptcy or insolvency pro-
 24 ceeding for purposes of paragraph (9)—

25 “(i) a bridge bank; or

“(ii) a depository institution organized by the Corporation, for which a conservator is appointed either—

“(I) immediately upon the organization of the institution; or

“(II) at the time of a purchase and assumption transaction between such institution and the Corporation as receiver for a depository institution in default.”.

**SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR
REPUDIATION OF QUALIFIED FINANCIAL
CONTRACTS.**

(a) *IN GENERAL.*—Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is further amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

“(11) *DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.*—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institu-

1 *tion is a party, the conservator or receiver for such*
 2 *institution shall either—*

3 *“(A) disaffirm or repudiate all qualified fi-*
 4 *nancial contracts between—*

5 *“(i) any person or any affiliate of such*
 6 *person; and*

7 *“(ii) the depository institution in de-*
 8 *fault; or*

9 *“(B) disaffirm or repudiate none of the*
 10 *qualified financial contracts referred to in sub-*
 11 *paragraph (A) (with respect to such person or*
 12 *any affiliate of such person).”.*

13 *(b) TECHNICAL AND CONFORMING AMENDMENTS.—*
 14 *Section 11(e)(8) of the Federal Deposit Insurance Act (12*
 15 *U.S.C. 1821(e)(8)), as amended by section 2(i), is further*
 16 *amended in subparagraph (C)(i), by striking “(11)” and*
 17 *inserting “(12)”.*

18 **SEC. 6. CLARIFYING AMENDMENT RELATING TO MASTER**
 19 **AGREEMENTS.**

20 *Section 11(e)(8)(D)(vii) of the Federal Deposit Insur-*
 21 *ance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read*
 22 *as follows:*

23 *“(vii) TREATMENT OF MASTER AGREE-*
 24 *MENT AS 1 AGREEMENT.—Any master*
 25 *agreement for any contract or agreement de-*

scribed in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.”.

SEC. 7. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) *DEFINITIONS.*—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) by inserting “or exempt from such registration pursuant to an order of the Securities and Exchange Commission” before the semicolon at the end of subparagraph (A)(ii); and

1 (B) by inserting “or that has been granted
2 an exemption pursuant to section 4(c)(1) of such
3 Act” before the period at the end of subpara-
4 graph (B);

5 (2) in paragraph (6)—

6 (A) by redesignating subparagraphs (B)
7 through (D) as subparagraphs (C) through (E),
8 respectively;

9 (B) by inserting after subparagraph (A) the
10 following new subparagraph:

11 “(B) an uninsured national bank or an un-
12 insured State bank that is a member of the Fed-
13 eral Reserve System if the national bank or
14 State member bank is not eligible to make appli-
15 cation to become an insured bank under section
16 5 of the Federal Deposit Insurance Act;”;

17 (C) by amending subparagraph (C) (as re-
18 designated) to read as follows:

19 “(C) a branch or agency of a foreign bank,
20 a foreign bank and any branch or agency of the
21 foreign bank, or the foreign bank that established
22 the branch or agency, as those terms are defined
23 in section 1(b) of the International Banking Act
24 of 1978;”;

1 (3) in paragraph (11), by adding before the pe-
 2 riod “and any other clearing organization with which
 3 such clearing organization has a netting contract”;

4 (4) by amending paragraph (14)(A)(i) to read as
 5 follows:

6 “(i) means a contract or agreement be-
 7 tween two or more financial institutions,
 8 clearing organizations, or members that
 9 provides for netting present or future pay-
 10 ment obligations or payment entitlements
 11 (including liquidation or closeout values re-
 12 lating to such obligations or entitlements)
 13 among the parties to the agreement; and”;
 14 and

15 (5) by adding at the end the following new para-
 16 graph:

17 “(15) PAYMENT.—The term ‘payment’ means a
 18 payment of United States dollars, another currency,
 19 or a composite currency, and a noncash delivery, in-
 20 cluding a payment or delivery to liquidate an
 21 unmatured obligation.”.

22 (b) ENFORCEABILITY OF BILATERAL NETTING CON-
 23 TRACTS.—Section 403 of the Federal Deposit Insurance
 24 Corporation Improvement Act of 1991 (12 U.S.C. 4403) is
 25 amended—

1 (1) *by amending subsection (a) to read as fol-*
2 *lows:*

3 “(a) *GENERAL RULE.—Notwithstanding any other*
4 *provision of State or Federal law (other than paragraphs*
5 *(8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal*
6 *Deposit Insurance Act or any order authorized under sec-*
7 *tion 5(b)(2) of the Securities Investor Protection Act of*
8 *1970), the covered contractual payment obligations and the*
9 *covered contractual payment entitlements between any two*
10 *financial institutions shall be netted in accordance with,*
11 *and subject to the conditions of, the terms of any applicable*
12 *netting contract (except as provided in section 561(b)(2) of*
13 *title 11, United States Code).”; and*

14 (2) *by adding at the end the following new sub-*
15 *section:*

16 “(f) *ENFORCEABILITY OF SECURITY AGREEMENTS.—*
17 *The provisions of any security agreement or arrangement*
18 *or other credit enhancement related to 1 or more netting*
19 *contracts between any two financial institutions shall be*
20 *enforceable in accordance with their terms (except as pro-*
21 *vided in section 561(b)(2) of title 11, United States Code)*
22 *and shall not be stayed, avoided, or otherwise limited by*
23 *any State or Federal law (other than paragraphs (8)(E),*
24 *(8)(F), and (10)(B) of section 11(e) of the Federal Deposit*

1 *Insurance Act and section 5(b)(2) of the Securities Investor*
 2 *Protection Act of 1970).”.*

3 (c) *ENFORCEABILITY OF CLEARING ORGANIZATION*
 4 *NETTING CONTRACTS.*—Section 404 of the Federal Deposit
 5 *Insurance Corporation Improvement Act of 1991 (12 U.S.C.*
 6 *4404) is amended—*

7 (1) *by amending subsection (a) to read as fol-*
 8 *lows:*

9 “(a) *GENERAL RULE.*—Notwithstanding any other
 10 *provision of State or Federal law (other than paragraphs*
 11 *(8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal*
 12 *Deposit Insurance Act and any order authorized under sec-*
 13 *tion 5(b)(2) of the Securities Investor Protection Act of*
 14 *1970), the covered contractual payment obligations and the*
 15 *covered contractual payment entitlements of a member of*
 16 *a clearing organization to and from all other members of*
 17 *a clearing organization shall be netted in accordance with*
 18 *and subject to the conditions of any applicable netting con-*
 19 *tract (except as provided in section 561(b)(2) of title 11,*
 20 *United States Code).”; and*

21 (2) *by adding at the end the following new sub-*
 22 *section:*

23 “(h) *ENFORCEABILITY OF SECURITY AGREEMENTS.*—
 24 *The provisions of any security agreement or arrangement*
 25 *or other credit enhancement related to 1 or more netting*

1 *contracts between any two members of a clearing organiza-*
 2 *tion shall be enforceable in accordance with their terms (ex-*
 3 *cept as provided in section 561(b)(2) of title 11, United*
 4 *States Code) and shall not be stayed, avoided, or otherwise*
 5 *limited by any State or Federal law (other than paragraphs*
 6 *(8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal*
 7 *Deposit Insurance Act and section 5(b)(2) of the Securities*
 8 *Investor Protection Act of 1970).”.*

9 (d) *ENFORCEABILITY OF CONTRACTS WITH UNIN-*
 10 *SURED NATIONAL BANKS AND UNINSURED FEDERAL*
 11 *BRANCHES AND AGENCIES.*—*The Federal Deposit Insur-*
 12 *ance Corporation Improvement Act of 1991 (12 U.S.C. 4401*
 13 *et seq.) is amended—*

14 (1) *by redesignating section 407 as section 407A;*
 15 *and*

16 (2) *by adding after section 406 the following new*
 17 *section:*

18 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**
 19 **NATIONAL BANKS AND UNINSURED FEDERAL**
 20 **BRANCHES AND AGENCIES.**

21 “(a) *IN GENERAL.*—*Notwithstanding any other provi-*
 22 *sion of law, paragraphs (8), (9), (10), and (11) of section*
 23 *11(e) of the Federal Deposit Insurance Act shall apply to*
 24 *an uninsured national bank or uninsured Federal branch*
 25 *or Federal agency except—*

1 “(1) any reference to the ‘Corporation as re-
 2 ceiver’ or ‘the receiver or the Corporation’ shall refer
 3 to the receiver of an uninsured national bank or un-
 4 insured Federal branch or Federal agency appointed
 5 by the Comptroller of the Currency;

6 “(2) any reference to the ‘Corporation’ (other
 7 than in section 11(e)(8)(D) of such Act), the ‘Corpora-
 8 tion, whether acting as such or as conservator or re-
 9 ceiver’, a ‘receiver’, or a ‘conservator’ shall refer to the
 10 receiver or conservator of an uninsured national bank
 11 or uninsured Federal branch or Federal agency ap-
 12 pointed by the Comptroller of the Currency; and

13 “(3) any reference to an ‘insured depository in-
 14 stitution’ or ‘depository institution’ shall refer to an
 15 uninsured national bank or an uninsured Federal
 16 branch or Federal agency.

17 “(b) *LIABILITY.*—The liability of a receiver or conser-
 18 vator of an uninsured national bank or uninsured Federal
 19 branch or agency shall be determined in the same manner
 20 and subject to the same limitations that apply to receivers
 21 and conservators of insured depository institutions under
 22 section 11(e) of the Federal Deposit Insurance Act.

23 “(c) *REGULATORY AUTHORITY.*—

24 “(1) *IN GENERAL.*—The Comptroller of the Cur-
 25 rency, in consultation with the Federal Deposit In-

1 *insurance Corporation, may promulgate regulations to*
 2 *implement this section.*

3 *“(2) SPECIFIC REQUIREMENT.—In promulgating*
 4 *regulations to implement this section, the Comptroller*
 5 *of the Currency shall ensure that the regulations gen-*
 6 *erally are consistent with the regulations and policies*
 7 *of the Federal Deposit Insurance Corporation adopted*
 8 *pursuant to the Federal Deposit Insurance Act.*

9 *“(d) DEFINITIONS.—For purposes of this section, the*
 10 *terms ‘Federal branch’, ‘Federal agency’, and ‘foreign bank’*
 11 *have the same meaning as in section 1(b) of the Inter-*
 12 *national Banking Act.”.*

13 **SEC. 8. BANKRUPTCY CODE AMENDMENTS.**

14 *(a) DEFINITIONS OF FORWARD CONTRACT, REPUR-*
 15 *CHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP*
 16 *AGREEMENT, COMMODITY CONTRACT, AND SECURITIES*
 17 *CONTRACT.—Title 11, United States Code, is amended—*

18 *(1) in section 101—*

19 *(A) in paragraph (25)—*

20 *(i) by striking “means a contract” and*
 21 *inserting “means—*

22 *“(A) a contract”;*

23 *(ii) by striking “, or any combination*
 24 *thereof or option thereon;” and inserting “,*
 25 *or any other similar agreement;”; and*

1 (iii) by adding at the end the fol-
2 lowing:

3 “(B) any combination of agreements or
4 transactions referred to in subparagraphs (A)
5 and (C);

6 “(C) any option to enter into an agreement
7 or transaction referred to in subparagraph (A)
8 or (B);

9 “(D) a master agreement that provides for
10 an agreement or transaction referred to in sub-
11 paragraph (A), (B), or (C), together with all
12 supplements to any such master agreement, with-
13 out regard to whether such master agreement
14 provides for an agreement or transaction that is
15 not a forward contract under this paragraph, ex-
16 cept that such master agreement shall be consid-
17 ered to be a forward contract under this para-
18 graph only with respect to each agreement or
19 transaction under such master agreement that is
20 referred to in subparagraph (A), (B) or (C); or

21 “(E) any security agreement or arrange-
22 ment, or other credit enhancement related to any
23 agreement or transaction referred to in subpara-
24 graph (A), (B), (C), or (D), but not to exceed the

1 *actual value of such contract on the date of the*
2 *filing of the petition;”;*

3 *(B) in paragraph (46), by striking “on any*
4 *day during the period beginning 90 days before*
5 *the date of” and inserting “at any time before”;*

6 *(C) by amending paragraph (47) to read as*
7 *follows:*

8 *“(47) ‘repurchase agreement’ (which definition*
9 *also applies to a ‘reverse repurchase agreement’)—*

10 *“(A) means—*

11 *“(i) an agreement, including related*
12 *terms, which provides for the transfer of 1*
13 *or more certificates of deposit, mortgage-re-*
14 *lated securities (as defined in the Securities*
15 *Exchange Act of 1934), mortgage loans, in-*
16 *terests in mortgage-related securities or*
17 *mortgage loans, eligible bankers’ accept-*
18 *ances, qualified foreign government securi-*
19 *ties, or securities that are direct obligations*
20 *of, or that are fully guaranteed by, the*
21 *United States or any agency of the United*
22 *States against the transfer of funds by the*
23 *transferee of such certificates of deposit, eli-*
24 *gible bankers’ acceptances, securities, loans,*
25 *or interests, with a simultaneous agreement*

1 *by such transferee to transfer to the trans-*
2 *feror thereof certificates of deposit, eligible*
3 *bankers' acceptance, securities, loans, or in-*
4 *terests of the kind described above, at a date*
5 *certain not later than 1 year after such*
6 *transfer or on demand, against the transfer*
7 *of funds;*

8 *“(ii) any combination of agreements or*
9 *transactions referred to in clauses (i) and*
10 *(iii);*

11 *“(iii) an option to enter into an agree-*
12 *ment or transaction referred to in clause (i)*
13 *or (ii);*

14 *“(iv) a master agreement that provides*
15 *for an agreement or transaction referred to*
16 *in clause (i), (ii), or (iii), together with all*
17 *supplements to any such master agreement,*
18 *without regard to whether such master*
19 *agreement provides for an agreement or*
20 *transaction that is not a repurchase agree-*
21 *ment under this paragraph, except that*
22 *such master agreement shall be considered*
23 *to be a repurchase agreement under this*
24 *paragraph only with respect to each agree-*
25 *ment or transaction under the master agree-*

1 *ment that is referred to in clause (i), (ii),*
2 *or (iii); or*

3 *“(v) any security agreement or ar-*
4 *rangement or other credit enhancement re-*
5 *lated to any agreement or transaction re-*
6 *ferred to in clause (i), (ii), (iii), or (iv), but*
7 *not to exceed the actual value of such con-*
8 *tract on the date of the filing of the petition;*
9 *and*

10 *“(B) does not include a repurchase obliga-*
11 *tion under a participation in a commercial*
12 *mortgage loan,*

13 *and, for purposes of this paragraph, the term ‘quali-*
14 *fied foreign government security’ means a security*
15 *that is a direct obligation of, or that is fully guaran-*
16 *teed by, the central government of a member of the*
17 *Organization for Economic Cooperation and Develop-*
18 *ment;”;*

19 *(D) in paragraph (48) by inserting “or ex-*
20 *empt from such registration under such section*
21 *pursuant to an order of the Securities and Ex-*
22 *change Commission” after “1934”; and*

23 *(E) by amending paragraph (53B) to read*
24 *as follows:*

25 *“(53B) ‘swap agreement’—*

1 “(A) means—

2 “(i) any agreement, including the
3 terms and conditions incorporated by ref-
4 erence in such agreement, which is an inter-
5 est rate swap, option, future, or forward
6 agreement, including a rate floor, rate cap,
7 rate collar, cross-currency rate swap, and
8 basis swap; a spot, same day-tomorrow, to-
9 morrow-next, forward, or other foreign ex-
10 change or precious metals agreement; a cur-
11 rency swap, option, future, or forward
12 agreement; an equity index or an equity
13 swap, option, future, or forward agreement;
14 a debt index or a debt swap, option, future,
15 or forward agreement; a credit spread or a
16 credit swap, option, future, or forward
17 agreement; a commodity index or a com-
18 modity swap, option, future, or forward
19 agreement; or a weather swap, weather de-
20 rivative, or weather option;

21 “(ii) any agreement or transaction
22 similar to any other agreement or trans-
23 action referred to in this paragraph that—

24 “(I) is presently, or in the future
25 becomes, regularly entered into in the

1 *swap market (including terms and*
2 *conditions incorporated by reference*
3 *therein); and*

4 *“(II) is a forward, swap, future,*
5 *or option on 1 or more rates, cur-*
6 *rencies, commodities, equity securities,*
7 *or other equity instruments, debt secu-*
8 *rities or other debt instruments, or eco-*
9 *nom ic indices or measures of economic*
10 *risk or value;*

11 *“(iii) any combination of agreements*
12 *or transactions referred to in this para-*
13 *graph;*

14 *“(iv) any option to enter into an*
15 *agreement or transaction referred to in this*
16 *paragraph;*

17 *“(v) a master agreement that provides*
18 *for an agreement or transaction referred to*
19 *in clause (i), (ii), (iii), or (iv), together*
20 *with all supplements to any such master*
21 *agreement, and without regard to whether*
22 *the master agreement contains an agree-*
23 *ment or transaction that is not a swap*
24 *agreement under this paragraph, except*
25 *that the master agreement shall be consid-*

1 *ered to be a swap agreement under this*
2 *paragraph only with respect to each agree-*
3 *ment or transaction under the master agree-*
4 *ment that is referred to in clause (i), (ii),*
5 *(iii), or (iv); or*

6 *“(B) any security agreement or arrange-*
7 *ment or other credit enhancement related to any*
8 *agreements or transactions referred to in sub-*
9 *paragraph (A), but not to exceed the actual value*
10 *of such contract on the date of the filing of the*
11 *petition; and*

12 *“(C) is applicable for purposes of this title*
13 *only and shall not be construed or applied so as*
14 *to challenge or affect the characterization, defini-*
15 *tion, or treatment of any swap agreement under*
16 *any other statute, regulation, or rule, including*
17 *the Securities Act of 1933, the Securities Ex-*
18 *change Act of 1934, the Public Utility Holding*
19 *Company Act of 1935, the Trust Indenture Act*
20 *of 1939, the Investment Company Act of 1940,*
21 *the Investment Advisers Act of 1940, the Securi-*
22 *ties Investor Protection Act of 1970, the Com-*
23 *modity Exchange Act, and the regulations pre-*
24 *scribed by the Securities and Exchange Commis-*

1 *sion or the Commodity Futures Trading Com-*
2 *mission.”;*

3 *(2) by amending section 741(7) to read as fol-*
4 *lows:*

5 *“(7) ‘securities contract’—*

6 *“(A) means—*

7 *“(i) a contract for the purchase, sale,*
8 *or loan of a security, a certificate of deposit,*
9 *a mortgage loan or any interest in a mort-*
10 *gage loan, a group or index of securities,*
11 *certificates of deposit or mortgage loans or*
12 *interests therein (including an interest*
13 *therein or based on the value thereof), or op-*
14 *tion on any of the foregoing, including an*
15 *option to purchase or sell any such security,*
16 *certificate of deposit, loan, interest, group or*
17 *index, or option;*

18 *“(ii) any option entered into on a na-*
19 *tional securities exchange relating to foreign*
20 *currencies;*

21 *“(iii) the guarantee by or to any secu-*
22 *rities clearing agency of a settlement of*
23 *cash, securities, certificates of deposit, mort-*
24 *gage loans or interests therein, group or*
25 *index of securities, or mortgage loans or in-*

1 *terests therein (including any interest there-*
2 *in or based on the value thereof), or option*
3 *on any of the foregoing, including an option*
4 *to purchase or sell any such security, cer-*
5 *tificate of deposit, loan, interest, group or*
6 *index, or option;*

7 *“(iv) any margin loan;*

8 *“(v) any other agreement or trans-*
9 *action that is similar to an agreement or*
10 *transaction referred to in this paragraph;*

11 *“(vi) any combination of the agree-*
12 *ments or transactions referred to in this*
13 *paragraph;*

14 *“(vii) any option to enter into any*
15 *agreement or transaction referred to in this*
16 *paragraph;*

17 *“(viii) a master agreement that pro-*
18 *vides for an agreement or transaction re-*
19 *ferred to in clause (i), (ii), (iii), (iv), (v),*
20 *(vi), or (vii), together with all supplements*
21 *to any such master agreement, without re-*
22 *gard to whether the master agreement pro-*
23 *vides for an agreement or transaction that*
24 *is not a securities contract under this para-*
25 *graph, except that such master agreement*

1 *shall be considered to be a securities con-*
 2 *tract under this paragraph only with re-*
 3 *spect to each agreement or transaction*
 4 *under such master agreement that is re-*
 5 *ferred to in clause (i), (ii), (iii), (iv), (v),*
 6 *(vi), or (vii); or*

7 *“(ix) any security agreement or ar-*
 8 *rangement or other credit enhancement re-*
 9 *lated to any agreement or transaction re-*
 10 *ferred to in this paragraph, but not to ex-*
 11 *ceed the actual value of such contract on the*
 12 *date of the filing of the petition; and*

13 *“(B) does not include any purchase, sale, or*
 14 *repurchase obligation under a participation in a*
 15 *commercial mortgage loan.”; and*

16 *(3) in section 761(4)—*

17 *(A) by striking “or” at the end of subpara-*
 18 *graph (D); and*

19 *(B) by adding at the end the following:*

20 *“(F) any other agreement or transaction*
 21 *that is similar to an agreement or transaction*
 22 *referred to in this paragraph;*

23 *“(G) any combination of the agreements or*
 24 *transactions referred to in this paragraph;*

1 “(H) any option to enter into an agreement
2 or transaction referred to in this paragraph;

3 “(I) a master agreement that provides for
4 an agreement or transaction referred to in sub-
5 paragraph (A), (B), (C), (D), (E), (F), (G), or
6 (H), together with all supplements to such mas-
7 ter agreement, without regard to whether the
8 master agreement provides for an agreement or
9 transaction that is not a commodity contract
10 under this paragraph, except that the master
11 agreement shall be considered to be a commodity
12 contract under this paragraph only with respect
13 to each agreement or transaction under the mas-
14 ter agreement that is referred to in subparagraph
15 (A), (B), (C), (D), (E), (F), (G), or (H); or

16 “(J) any security agreement or arrange-
17 ment or other credit enhancement related to any
18 agreement or transaction referred to in this
19 paragraph, but not to exceed the actual value of
20 such contract on the date of the filing of the peti-
21 tion;”.

22 (b) *DEFINITIONS OF FINANCIAL INSTITUTION, FINAN-*
23 *CIAL PARTICIPANT, AND FORWARD CONTRACT MER-*
24 *CHANT.*—Section 101 of title 11, United States Code, is
25 amended—

1 (1) by striking paragraph (22) and inserting the
2 following new paragraph:

3 “(22) the term ‘financial institution’—

4 “(A) means a Federal reserve bank or an
5 entity (domestic or foreign) that is a commercial
6 or savings bank, industrial savings bank, savings
7 and loan association, trust company, a bank or
8 a corporation organized under section 25A of the
9 Federal Reserve Act and, when any such bank or
10 entity is acting as agent or custodian for a cus-
11 tomer in connection with a securities contract,
12 as defined in section 741, such customer; and

13 “(B) includes any person described in sub-
14 paragraph (A) which operates, or operates as, a
15 multilateral clearing organization pursuant to
16 section 409 of the Federal Deposit Insurance
17 Corporation Improvement Act of 1991;”;

18 (2) by inserting after paragraph (22) the fol-
19 lowing:

20 “(22A) ‘financial participant’ means an entity
21 that, at the time it enters into a securities contract,
22 commodity contract or forward contract, or at the
23 time of the filing of the petition, has 1 or more agree-
24 ments or transactions described in paragraph (1), (2),
25 (3), (4), (5), or (6) of section 561(a) with the debtor

1 *or any other entity (other than an affiliate) of a total*
 2 *gross dollar value of at least \$1,000,000,000 in no-*
 3 *tional or actual principal amount outstanding on*
 4 *any day during the previous 15-month period, or has*
 5 *gross mark-to-market positions of at least*
 6 *\$100,000,000 (aggregated across counterparties) in 1*
 7 *or more such agreement or transaction with the debt-*
 8 *or or any other entity (other than an affiliate) on*
 9 *any day during the previous 15-month period;”;* and

10 *(3) by amending paragraph (26) to read as fol-*
 11 *lows:*

12 *“(26) ‘forward contract merchant’ means a Fed-*
 13 *eral reserve bank, or an entity whose business consists*
 14 *in whole or in part of entering into forward contracts*
 15 *as or with merchants or in a commodity, as defined*
 16 *or in section 761, or any similar good, article, serv-*
 17 *ice, right, or interest which is presently or in the fu-*
 18 *ture becomes the subject of dealing or in the forward*
 19 *contract trade;”.*

20 *(c) DEFINITION OF MASTER NETTING AGREEMENT*
 21 *AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-*
 22 *tion 101 of title 11, United States Code, is amended by in-*
 23 *serting after paragraph (38) the following new paragraphs:*

24 *“(38A) ‘master netting agreement’ means an*
 25 *agreement providing for the exercise of rights, includ-*

1 *ing rights of netting, setoff, liquidation, termination,*
 2 *acceleration, or closeout, under or in connection with*
 3 *1 or more contracts that are described in any 1 or*
 4 *more of paragraphs (1) through (5) of section 561(a),*
 5 *or any security agreement or arrangement or other*
 6 *credit enhancement related to 1 or more of the fore-*
 7 *going. If a master netting agreement contains provi-*
 8 *sions relating to agreements or transactions that are*
 9 *not contracts described in paragraphs (1) through (5)*
 10 *of section 561(a), the master netting agreement shall*
 11 *be deemed to be a master netting agreement only with*
 12 *respect to those agreements or transactions that are*
 13 *described in any 1 or more of the paragraphs (1)*
 14 *through (5) of section 561(a);*

15 “(38B) ‘master netting agreement participant’
 16 *means an entity that, at any time before the filing of*
 17 *the petition, is a party to an outstanding master net-*
 18 *ting agreement with the debtor;”.*

19 *(d) SWAP AGREEMENTS, SECURITIES CONTRACTS,*
 20 *COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-*
 21 *CHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS*
 22 *UNDER THE AUTOMATIC-STAY.—*

23 *(1) IN GENERAL.—Section 362(b) of title 11,*
 24 *United States Code, is amended—*

1 (A) in paragraph (6), by inserting “,
2 pledged to and under the control of,” after “held
3 by”;

4 (B) in paragraph (7), by inserting “,
5 pledged to and under the control of,” after “held
6 by”;

7 (C) by amending paragraph (17) to read as
8 follows:

9 “(17) under subsection (a), of the setoff by a
10 swap participant of a mutual debt and claim under
11 or in connection with 1 or more swap agreements that
12 constitutes the setoff of a claim against the debtor for
13 any payment or other transfer of property due from
14 the debtor under or in connection with any swap
15 agreement against any payment due to the debtor
16 from the swap participant under or in connection
17 with any swap agreement or against cash, securities,
18 or other property held by, pledged to and under the
19 control of, or due from such swap participant to mar-
20 gin, guarantee, secure, or settle any swap agree-
21 ment;”;

22 (D) in paragraph (18) by striking the pe-
23 riod at the end and inserting “; or”; and

24 (E) by inserting after paragraph (18) the
25 following new paragraph:

1 “(19) under subsection (a), of the setoff by a
2 master netting agreement participant of a mutual
3 debt and claim under or in connection with 1 or more
4 master netting agreements or any contract or agree-
5 ment subject to such agreements that constitutes the
6 setoff of a claim against the debtor for any payment
7 or other transfer of property due from the debtor
8 under or in connection with such agreements or any
9 contract or agreement subject to such agreements
10 against any payment due to the debtor from such
11 master netting agreement participant under or in
12 connection with such agreements or any contract or
13 agreement subject to such agreements or against cash,
14 securities, or other property held by, pledged to and
15 under the control of, or due from such master netting
16 agreement participant to margin, guarantee, secure,
17 or settle such agreements or any contract or agree-
18 ment subject to such agreements, to the extent such
19 participant is eligible to exercise such offset rights
20 under paragraph (6), (7), or (17) for each individual
21 contract covered by the master netting agreement in
22 issue.”.

23 (2) *LIMITATION.*—Section 362 of title 11, United
24 States Code, is amended by adding at the end the fol-
25 lowing:

1 “(i) *LIMITATION.*—*The exercise of rights not subject to*
 2 *the stay arising under subsection (a) pursuant to para-*
 3 *graph (6), (7), or (17), or (32) of subsection (b) shall not*
 4 *be stayed by any order of a court or administrative agency*
 5 *in any proceeding under this title.”.*

6 (e) *LIMITATION OF AVOIDANCE POWERS UNDER MAS-*
 7 *TER NETTING AGREEMENT.*—*Section 546 of title 11, United*
 8 *States Code, is amended—*

9 (1) *in subsection (g) (as added by section 103 of*
 10 *Public Law 101–311)—*

11 (A) *by striking “under a swap agreement”;*

12 *and*

13 (B) *by striking “in connection with a swap*
 14 *agreement” and inserting “under or in connec-*
 15 *tion with any swap agreement”;* *and*

16 (2) *by adding at the end the following:*

17 “(j) *Notwithstanding sections 544, 545, 547,*
 18 *548(a)(1)(B), and 548(b), the trustee may not avoid a*
 19 *transfer made by or to a master netting agreement partici-*
 20 *pant under or in connection with any master netting agree-*
 21 *ment or any individual contract covered thereby that is*
 22 *made before the commencement of the case, except under sec-*
 23 *tion 548(a)(1)(A), and except to the extent the trustee could*
 24 *otherwise avoid such a transfer made under an individual*
 25 *contract covered by such master netting agreement.”.*

1 (f) *FRAUDULENT TRANSFERS OF MASTER NETTING*
 2 *AGREEMENTS.*—Section 548(d)(2) of title 11, United States
 3 Code, is amended—

4 (1) in subparagraph (C), by striking “and”;
 5 (2) in subparagraph (D), by striking the period
 6 and inserting “; and”; and
 7 (3) by adding at the end the following new sub-
 8 paragraph:

9 “(E) a master netting agreement participant
 10 that receives a transfer in connection with a master
 11 netting agreement or any individual contract covered
 12 thereby takes for value to the extent of such transfer,
 13 except, with respect to a transfer under any indi-
 14 vidual contract covered thereby, to the extent such
 15 master netting agreement participant otherwise did
 16 not take (or is otherwise not deemed to have taken)
 17 such transfer for value.”.

18 (g) *TERMINATION OR ACCELERATION OF SECURITIES*
 19 *CONTRACTS.*—Section 555 of title 11, United States Code,
 20 is amended—

21 (1) by amending the section heading to read as
 22 follows:
 23 **“§555. Contractual right to liquidate, terminate, or**
 24 **accelerate a securities contract”;**
 25 and

1 (2) *in the first sentence, by striking “liquida-*
 2 *tion” and inserting “liquidation, termination, or ac-*
 3 *celeration”.*

4 (h) *TERMINATION OR ACCELERATION OF COMMOD-*
 5 *ITIES OR FORWARD CONTRACTS.*—Section 556 of title 11,
 6 *United States Code, is amended—*

7 (1) *by amending the section heading to read as*
 8 *follows:*

9 **“§556. Contractual right to liquidate, terminate, or**
 10 **accelerate a commodities contract or for-**
 11 **ward contract”;**

12 *and*

13 (2) *in the first sentence, by striking “liquida-*
 14 *tion” and inserting “liquidation, termination, or ac-*
 15 *celeration”.*

16 (i) *TERMINATION OR ACCELERATION OF REPURCHASE*
 17 *AGREEMENTS.*—Section 559 of title 11, *United States Code,*
 18 *is amended—*

19 (1) *by amending the section heading to read as*
 20 *follows:*

21 **“§559. Contractual right to liquidate, terminate, or**
 22 **accelerate a repurchase agreement”;**

23 *and*

1 (2) *in the first sentence, by striking “liquida-*
 2 *tion” and inserting “liquidation, termination, or ac-*
 3 *celeration”.*

4 (j) *LIQUIDATION, TERMINATION, OR ACCELERATION OF*
 5 *SWAP AGREEMENTS.—Section 560 of title 11, United States*
 6 *Code, is amended—*

7 (1) *by amending the section heading to read as*
 8 *follows:*

9 **“§560. Contractual right to liquidate, terminate, or**
 10 **accelerate a swap agreement”;**

11 (2) *in the first sentence, by striking “termi-*
 12 *nation of a swap agreement” and inserting “liquida-*
 13 *tion, termination, or acceleration of 1 or more swap*
 14 *agreements”; and*

15 (3) *by striking “in connection with any swap*
 16 *agreement” and inserting “in connection with the ter-*
 17 *mination, liquidation, or acceleration of 1 or more*
 18 *swap agreements”.*

19 (k) *LIQUIDATION, TERMINATION, ACCELERATION, OR*
 20 *OFFSET UNDER A MASTER NETTING AGREEMENT AND*
 21 *ACROSS CONTRACTS.—(1) Title 11, United States Code, is*
 22 *amended by inserting after section 560 the following:*

1 **“§561. Contractual right to terminate, liquidate, ac-**
 2 **celerate, or offset under a master netting**
 3 **agreement and across contracts**

4 “(a) *IN GENERAL.*—Subject to subsection (b), the exer-
 5 cise of any contractual right, because of a condition of the
 6 kind specified in section 365(e)(1), to cause the termination,
 7 liquidation, or acceleration of or to offset or net termination
 8 values, payment amounts or other transfer obligations aris-
 9 ing under or in connection with 1 or more (or the termi-
 10 nation, liquidation, or acceleration of 1 or more)—

11 “(1) *securities contracts, as defined in section*
 12 *741(7);*

13 “(2) *commodity contracts, as defined in section*
 14 *761(4);*

15 “(3) *forward contracts;*

16 “(4) *repurchase agreements;*

17 “(5) *swap agreements; or*

18 “(6) *master netting agreements,*

19 *shall not be stayed, avoided, or otherwise limited by oper-*
 20 *ation of any provision of this title or by any order of a*
 21 *court or administrative agency in any proceeding under*
 22 *this title.*

23 “(b) *EXCEPTION.*—

24 “(1) *A party may exercise a contractual right*
 25 *described in subsection (a) to terminate, liquidate, or*
 26 *accelerate only to the extent that such party could ex-*

1 *ercise such a right under section 555, 556, 559, or*
2 *560 for each individual contract covered by the mas-*
3 *ter netting agreement in issue.*

4 *“(2) If a debtor is a commodity broker subject to*
5 *subchapter IV of chapter 7—*

6 *“(A) a party may not net or offset an obli-*
7 *gation to the debtor arising under, or in connec-*
8 *tion with, a commodity contract against any*
9 *claim arising under, or in connection with, other*
10 *instruments, contracts, or agreements listed in*
11 *subsection (a), except to the extent the party has*
12 *positive net equity in the commodity accounts at*
13 *the debtor, as calculated under such subchapter;*
14 *and*

15 *“(B) another commodity broker may not net*
16 *or offset an obligation to the debtor arising*
17 *under, or in connection with, a commodity con-*
18 *tract entered into or held on behalf of a customer*
19 *of the debtor against any claim arising under, or*
20 *in connection with, other instruments, contracts,*
21 *or agreements listed in subsection (a).*

22 *“(c) RULE OF APPLICATION.—Subparagraphs (A) and*
23 *(B) of subsection (b)(2) shall not be construed as prohibiting*
24 *the offset of claims and obligations arising pursuant to—*

1 “(1) a cross-margining arrangement that has
 2 been approved by the Commodity Futures Trading
 3 Commission or that has been submitted to such Com-
 4 mission pursuant to section 5a(a)(12) of the Com-
 5 modity Exchange Act and has been permitted to go
 6 into effect; or

7 “(2) another netting arrangement, between a
 8 clearing organization (as defined in section 761) and
 9 another entity, that has been approved by the Com-
 10 modity Futures Trading Commission.

11 “(d) *DEFINITION.*—As used in this section, the term
 12 ‘contractual right’ includes a right set forth in a rule or
 13 bylaw of a national securities exchange, a national securi-
 14 ties association, or a securities clearing agency, a right set
 15 forth in a bylaw of a clearing organization or contract mar-
 16 ket or in a resolution of the governing board thereof, and
 17 a right, whether or not evidenced in writing, arising under
 18 common law, under law merchant, or by reason of normal
 19 business practice.”.

20 (2) *CONFORMING AMENDMENT.*—The table of sections
 21 of chapter 5 of title 11, United States Code, is amended
 22 by inserting after the item relating to section 560 the fol-
 23 lowing:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a mas-
 ter netting agreement and across contracts.”.

1 (l) *MUNICIPAL BANKRUPTCIES*.—Section 901(a) of
 2 *title 11, United States Code, is amended—*

3 (1) *by inserting “555, 556,” after “553,”; and*

4 (2) *by inserting “559, 560, 561, 562,” after*
 5 *“557,”.*

6 (m) *ANCILLARY PROCEEDINGS*.—Section 304 of title
 7 11, *United States Code, is amended by adding at the end*
 8 *the following new subsection:*

9 “(d) *Any provisions of this title relating to securities*
 10 *contracts, commodity contracts, forward contracts, repur-*
 11 *chase agreements, swap agreements, or master netting*
 12 *agreements shall apply in a case ancillary to a foreign pro-*
 13 *ceeding under this section or any other section of this title*
 14 *so that enforcement of contractual provisions of such con-*
 15 *tracts and agreements in accordance with their terms will*
 16 *not be stayed or otherwise limited by operation of any pro-*
 17 *vision of this title or by order of a court in any proceeding*
 18 *under this title, and to limit avoidance powers to the same*
 19 *extent as in a proceeding under chapter 7 or 11 (such en-*
 20 *forcement not to be limited based on the presence or absence*
 21 *of assets of the debtor in the United States).”.*

22 (n) *COMMODITY BROKER LIQUIDATIONS*.—Title 11,
 23 *United States Code, is amended by inserting after section*
 24 766 *the following:*

1 ***“§ 767. Commodity broker liquidation and forward***
 2 ***contract merchants, commodity brokers,***
 3 ***stockbrokers, financial institutions, fi-***
 4 ***nancial participants, securities clearing***
 5 ***agencies, swap participants, repo partici-***
 6 ***pants, and master netting agreement par-***
 7 ***ticipants***

8 *“Notwithstanding any other provision of this title, the*
 9 *exercise of rights by a forward contract merchant, com-*
 10 *modity broker, stockbroker, financial institution, financial*
 11 *participant, securities clearing agency, swap participant,*
 12 *repo participant, or master netting agreement participant*
 13 *under this title shall not affect the priority of any unsecured*
 14 *claim it may have after the exercise of such rights.”.*

15 *(o) STOCKBROKER LIQUIDATIONS.—Title 11, United*
 16 *States Code, is amended by inserting after section 752 the*
 17 *following:*

18 ***“§ 753. Stockbroker liquidation and forward contract***
 19 ***merchants, commodity brokers, stock-***
 20 ***brokers, financial institutions, financial***
 21 ***participants, securities clearing agencies,***
 22 ***swap participants, repo participants, and***
 23 ***master netting agreement participants***

24 *“Notwithstanding any other provision of this title, the*
 25 *exercise of rights by a forward contract merchant, com-*
 26 *modity broker, stockbroker, financial institution, securities*

1 *clearing agency, swap participant, repo participant, finan-*
 2 *cial participant, or master netting agreement participant*
 3 *under this title shall not affect the priority of any unsecured*
 4 *claim it may have after the exercise of such rights.”.*

5 (p) *SETOFF.—Section 553 of title 11, United States*
 6 *Code, is amended—*

7 (1) *in subsection (a)(3)(C), by inserting “(except*
 8 *for a setoff of a kind described in section 362(b)(6),*
 9 *362(b)(7), 362(b)(17), 362(b)(32), 555, 556, 559, 560*
 10 *or 561)” before the period; and*

11 (2) *in subsection (b)(1), by striking “362(b)(14)”*
 12 *and inserting “362(b)(17), 362(b)(32), 555, 556, 559,*
 13 *560, 561”.*

14 (q) *SECURITIES CONTRACTS, COMMODITY CONTRACTS,*
 15 *AND FORWARD CONTRACTS.—Title 11, United States Code,*
 16 *is amended—*

17 (1) *in section 362(b)(6), by striking “financial*
 18 *institutions,” each place such term appears and in-*
 19 *serting “financial institution, financial participant”;*

20 (2) *in section 546(e), by inserting “financial*
 21 *participant,” after “financial institution,”;*

22 (3) *in section 548(d)(2)(B), by inserting “finan-*
 23 *cial participant,” after “financial institution,”;*

24 (4) *in section 555—*

1 (A) by inserting “financial participant,”
 2 after “financial institution,”; and

3 (B) by inserting before the period at the end
 4 “, a right set forth in a bylaw of a clearing orga-
 5 nization or contract market or in a resolution of
 6 the governing board thereof, and a right, whether
 7 or not in writing, arising under common law,
 8 under law merchant, or by reason of normal
 9 business practice”; and

10 (5) in section 556, by inserting “, financial par-
 11 ticipant” after “commodity broker”.

12 (r) *CONFORMING AMENDMENTS.*—Title 11, United
 13 States Code, is amended—

14 (1) in the table of sections of chapter 5—

15 (A) by amending the items relating to sec-
 16 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities contract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-
 tract or forward contract.”;

17 and

18 (B) by amending the items relating to sec-
 19 tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase agree-
 ment.

“560. Contractual right to liquidate, terminate, or accelerate a swap agreement.”;

20 and

21 (2) in the table of sections of chapter 7—

1 (A) by inserting after the item relating to
2 section 766 the following:

“767. *Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.*”;

3 and

4 (B) by inserting after the item relating to
5 section 752 the following:

“753. *Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.*”.

6 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

7 Section 11(e)(8) of the Federal Deposit Insurance Act
8 (12 U.S.C. 1821(e)(8)) is amended by adding at the end
9 the following new subparagraph:

10 “(H) **RECORDKEEPING REQUIREMENTS.**—
11 The Corporation, in consultation with the appro-
12 priate Federal banking agencies, may prescribe
13 regulations requiring more detailed record-
14 keeping with respect to qualified financial con-
15 tracts (including market valuations) by insured
16 depository institutions.”.

17 **SEC. 10. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**
18 **TION REQUIREMENT.**

19 Section 13(e)(2) of the Federal Deposit Insurance Act
20 (12 U.S.C. 1823(e)(2)) is amended to read as follows:

1 “(2) *EXEMPTIONS FROM CONTEMPORANEOUS*
 2 *EXECUTION REQUIREMENT.*—*An agreement to provide*
 3 *for the lawful collateralization of—*

4 “(A) *deposits of, or other credit extension*
 5 *by, a Federal, State, or local governmental enti-*
 6 *ty, or of any depositor referred to in section*
 7 *11(a)(2), including an agreement to provide col-*
 8 *lateral in lieu of a surety bond;*

9 “(B) *bankruptcy estate funds pursuant to*
 10 *section 345(b)(2) of title 11, United States Code;*

11 “(C) *extensions of credit, including any*
 12 *overdraft, from a Federal reserve bank or Federal*
 13 *home loan bank; or*

14 “(D) *1 or more qualified financial con-*
 15 *tracts, as defined in section 11(e)(8)(D),*

16 *shall not be deemed invalid pursuant to paragraph*
 17 *(1)(B) solely because such agreement was not executed*
 18 *contemporaneously with the acquisition of the collat-*
 19 *eral or because of pledges, delivery, or substitution of*
 20 *the collateral made in accordance with such agree-*
 21 *ment.”.*

22 **SEC. 11. DAMAGE MEASURE.**

23 (a) *IN GENERAL.*—*Title 11, United States Code, is*
 24 *amended—*

25 (1) *by inserting after section 561 the following:*

1 **“§562. Damage measure in connection with swap**
 2 **agreements, securities contracts, forward**
 3 **contracts, commodity contracts, repur-**
 4 **chase agreements, or master netting**
 5 **agreements**

6 *“If the trustee rejects a swap agreement, securities con-*
 7 *tract as defined in section 741, forward contract, com-*
 8 *modity contract (as defined in section 761) repurchase*
 9 *agreement, or master netting agreement pursuant to section*
 10 *365(a), or if a forward contract merchant, stockbroker, fi-*
 11 *nancial institution, securities clearing agency, repo partici-*
 12 *pant, financial participant, master netting agreement par-*
 13 *ticipant, or swap participant liquidates, terminates, or ac-*
 14 *celerates such contract or agreement, damages shall be*
 15 *measured as of the earlier of—*

16 *“(1) the date of such rejection; or*

17 *“(2) the date of such liquidation, termination, or*
 18 *acceleration.”; and*

19 *(2) in the table of sections of chapter 5 by insert-*
 20 *ing after the item relating to section 561 the fol-*
 21 *lowing:*

“562. Damage measure in connection with swap agreements, securities contracts,
forward contracts, commodity contracts, repurchase agreements,
or master netting agreements.”.

22 *(b) CLAIMS ARISING FROM REJECTION.—Section*
 23 *502(g) of title 11, United States Code, is amended—*

1 (1) by designating the existing text as paragraph
2 (1); and

3 (2) by adding at the end the following:

4 “(2) A claim for damages calculated in accordance
5 with section 562 shall be allowed under subsection (a), (b),
6 or (c), or disallowed under subsection (d) or (e), as if such
7 claim had arisen before the date of the filing of the peti-
8 tion.”.

9 **SEC. 12. SIPC STAY.**

10 Section 5(b)(2) of the Securities Investor Protection
11 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding
12 after subparagraph (B) the following new subparagraph:

13 “(C) EXCEPTION FROM STAY.—

14 “(i) Notwithstanding section 362 of
15 title 11, United States Code, neither the fil-
16 ing of an application under subsection
17 (a)(3) nor any order or decree obtained by
18 the Securities Investor Protection Corpora-
19 tion from the court shall operate as a stay
20 of any contractual rights of a creditor to
21 liquidate, terminate, or accelerate a securi-
22 ties contract, commodity contract, forward
23 contract, repurchase agreement, swap agree-
24 ment, or master netting agreement, each as
25 defined in title 11 United States Code, to

1 *offset or net termination values, payment*
2 *amounts, or other transfer obligations aris-*
3 *ing under or in connection with 1 or more*
4 *of such contracts or agreements, or to fore-*
5 *close on any cash collateral pledged by the*
6 *debtor whether or not with respect to 1 or*
7 *more of such contracts or agreements.*

8 “(ii) *Notwithstanding clause (i), such*
9 *application, order, or decree may operate as*
10 *a stay of the foreclosure on or disposition of*
11 *securities collateral pledged by the debtor,*
12 *whether or not with respect to 1 or more of*
13 *such contracts or agreements, securities sold*
14 *by the debtor under a repurchase agreement*
15 *or securities lent under a securities lending*
16 *agreement.*

17 “(iii) *As used in this section, the term*
18 *‘contractual right’ includes a right set forth*
19 *in a rule or bylaw of a national securities*
20 *exchange, a national securities association,*
21 *or a securities clearing agency, a right set*
22 *forth in a bylaw of a clearing organization*
23 *or contract market or in a resolution of the*
24 *governing board thereof, and a right, wheth-*
25 *er or not in writing, arising under common*

1 *law, under law merchant, or by reason of*
2 *normal business practice.”.*

3 **SEC. 13. ASSET-BACKED SECURITIZATIONS.**

4 *Section 541 of title 11, United States Code, is*
5 *amended—*

6 *(1) in subsection (b)—*

7 *(A) by striking “or” at the end of para-*
8 *graph (4)(B)(ii);*

9 *(B) by redesignating paragraph (5) as*
10 *paragraph (6); and*

11 *(C) by inserting after paragraph (4) the fol-*
12 *lowing new paragraph:*

13 *“(5) any eligible asset (or proceeds thereof), to*
14 *the extent that such eligible asset was transferred by*
15 *the debtor before the date of commencement of the*
16 *case, to an eligible entity in connection with an asset-*
17 *backed securitization, except to the extent such asset*
18 *(or proceeds or value thereof) may be recovered by the*
19 *trustee under section 550 by virtue of avoidance*
20 *under section 548(a)(1); or”;* and

21 *(2) by adding at the end the following new sub-*
22 *section:*

23 *“(e) For purposes of this section, the following defini-*
24 *tions shall apply:*

1 “(1) the term ‘asset-backed securitization’ means
2 a transaction in which eligible assets transferred to
3 an eligible entity are used as the source of payment
4 on securities, including all securities issued by gov-
5 ernmental units, at least 1 class or tranche of which
6 is rated investment grade by 1 or more nationally
7 recognized securities rating organizations, when the
8 securities are initially issued by an issuer;

9 “(2) the term ‘eligible asset’ means—

10 “(A) financial assets (including interests
11 therein and proceeds thereof), either fixed or re-
12 volving, whether or not such assets are in exist-
13 ence as of the date of the transfer, including resi-
14 dential and commercial mortgage loans, con-
15 sumer receivables, trade receivables, assets of gov-
16 ernmental units (including payment obligations
17 relating to taxes, receipts, fines, tickets, and
18 other sources of revenue), and lease receivables,
19 that, by their terms, convert into cash within a
20 finite time period, plus any residual interest in
21 property subject to receivables included in such
22 financial assets plus any rights or other assets
23 designed to assure the servicing or timely dis-
24 tribution of proceeds to security holders;

25 “(B) cash; and

1 “(C) securities, including all securities
2 issued by governmental units.

3 “(3) the term ‘eligible entity’ means—

4 “(A) an issuer; or

5 “(B) a trust, corporation, partnership, gov-
6 ernmental unit, limited liability company (in-
7 cluding a single member limited liability com-
8 pany), or other entity engaged exclusively in the
9 business of acquiring and transferring eligible
10 assets directly or indirectly to an issuer and tak-
11 ing actions ancillary thereto;

12 “(4) the term ‘issuer’ means a trust, corporation,
13 partnership, governmental unit, limited liability com-
14 pany (including a single member limited liability
15 company), or other entity engaged exclusively in the
16 business of acquiring and holding eligible assets,
17 issuing securities backed by eligible assets, and taking
18 actions ancillary thereto; and

19 “(5) the term ‘transferred’ means the debtor, pur-
20 suant to a written agreement, represented and war-
21 ranted that eligible assets were sold, contributed, or
22 otherwise conveyed with the intention of removing
23 them from the estate of the debtor pursuant to sub-
24 section (b)(5) (whether or not reference is made to this

1 *title or any section of this title), irrespective, without*
2 *limitation, of—*

3 “(A) *whether the debtor directly or indi-*
4 *rectly obtained or held an interest in the issuer*
5 *or in any securities issued by the issuer;*

6 “(B) *whether the debtor had an obligation*
7 *to repurchase or to service or supervise the serv-*
8 *icing of all or any portion of such eligible assets;*
9 *or*

10 “(C) *the characterization of such sale, con-*
11 *tribution, or other conveyance for tax, account-*
12 *ing, regulatory reporting, or other purposes.”.*

13 **SEC. 14. APPLICATION OF AMENDMENTS.**

14 *The amendments made by this Act shall apply with*
15 *respect to cases commenced or appointments made under*
16 *any Federal or State law after the date of the enactment*
17 *of this Act, but shall not apply with respect to cases com-*
18 *menced or appointments made under any Federal or State*
19 *law before the date of the enactment of this Act.*

Union Calendar No. 492

106TH CONGRESS
2D SESSION

H. R. 1161

[Report No. 106-834, Part I]

A BILL

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

SEPTEMBER 7, 2000

Reported from the Committee on Banking and Financial Services with an amendment

SEPTEMBER 7, 2000

Referral to the Committees on the Judiciary and Commerce extended for a period ending not later than September 7, 2000.

SEPTEMBER 7, 2000

The Committees on the Judiciary and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed